



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 08, 2022

IN THE MATTER OF:

Appeal Board No. 620970

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective October 31, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by MONTEFIORE MEDICAL CENTER prior to October 31, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. At the hearing, the Judge added the alternate issue disqualifying the claimant from receiving benefits, on the basis that the claimant voluntarily separated from employment without good cause pursuant to the doctrine of provoked discharge. Due process was accorded. By decision filed January 26, 2022 (A.L.J. Case No.), the Administrative Law Judge overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. More testimony and evidence is needed before the issues are decided. Specifically, the employer should produce a witness with firsthand knowledge of the reason that the employer granted some requests for religious exemptions from the mandatory COVID-19 vaccination policy but denied that of the claimant. At the remand hearing, the Administrative Law Judge shall question

the parties with respect to the foregoing, as well as whether the office to which the claimant reported in person each month is located at a healthcare facility.

The parties may produce any other relevant witnesses or documents. The Administrative Law Judge may take any other testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of voluntary leaving of employment without good cause, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER